86 - 1348



No._____

IN THE

**SUPREME COURT OF THE UNITED STATES**

**October Term, 1987**

MALINEE CHINAKOOL,
Petitioner

vs.

TRUSTEES OF THE CALIFORNIA STATE UNI-, VERSITIES AND COLLEGES, DR. PAUL WASH-BURN, an individual, DR. KEITH R. BLUNT, an individual,
Respondent

On Writ of Certiorari to the Supreme Court of the State of California

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Did the reviewing Court of Appeals improperly consider facts outside the scope of the original, First Amended and Second Amended Petitions for Writ of Mandate?

2. Did the reviewing court, the Supreme Court of the State of California improperly deny the Petition for Review?

3. Did the reviewing Court of Appeals improperly affirm judgment of the lower court when Appellant/Petitioner sufficiently alleged that Respondents/Defendants acted arbitrarily, capriciously, and in bad faith?

4. Did the reviewing court, the Supreme Court of the State of California, improperly deny the Petition for Review when Petitioner sufficiently alleged that Respondents acted arbitrarily, capriciously and in bad faith?

5. Did the reviewing Court of

Appeals improperly infer there were two actions in this case: 1) Washburn's assignment of grade of "D" on Chinakool's papers; and 2) the committee's review of Chinakool's grievance filed?

6. Did the reviewing Court of Appeals and Trial Court fail to make any determination of the allegations for the Writ of Mandate did not sufficiently plead arbitrariness, caprice or bad faith on the part of the Respondents/Defendants towards Petitioner/Appellant?

7. Do issues of race and sexual harassment and discrimination as alleged in the Petition for Writ of Mandate compel the lower courts to conduct an evidentiary hearing to fulfill procedural due process under Goss vs. Lopez?

8. Does sexual and racial discrimination and harassment at our educational facilities prevent or preclude judicial intervention?

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vs.

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Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE

STATE OF CALIFORNIA

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The Petitioner, MALINEE CHINAKOOL, prays that a Writ of Certiorari be issue to review the Order rendered on August 30, 1985 sustaining the Demurrer to the Petition for Writ of Mandate without leave to amend and executing an Order of Dismissal shortly thereafter, and the decision of the Court of Appeals of the State of California for the Second Appellate District affirming the judgment of the lower court on September 4, 1986, and the denial of Petitioner's Petition for Review by the Supreme Court of the State of California on November 19, 1986.

## OPINIONS BELOW

The Minute Order of the Hearing on the Demurrer for the Second Amended Petition for Writ of Mandamus dated August 30, 1985 in the Superior Court of the State of California, County of Los Angeles, is printed in Appendix "A"

hereto, infra. The decision of the Court of Appeals of the State of California for the Second Appellate District, dated September 4, 1986, unreported and is printed in Appendix "A" hereto. The Petition for Review denied by the Supreme Court of the State of California, dated November 19, 1986 unreported and is printed in Appendix "A" hereto.

## JURISDICTION

The Judgment of Dismissal by the Superior Court of the State of California, Los Angeles County, and the decision of the Court of Appeals for the State of California, Second Appellate District, was entered on August 30, 1985 and September 4, 1986 respectively. The Petition for Review was denied by the Supreme Court for the State of California on November 19, 1986. This Petition for Writ of Certiorari was filed within

ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254.

## QUESTIONS PRESENTED

1. Did the reviewing Court of Appeals improperly consider facts outside the scope of the original, First Amended and Second Amended Petitions for Writ of Mandate?

2. Did the reviewing court, the Supreme Court of the State of California improperly deny the Petition for Review?

3. Did the reviewing Court of Appeals improperly affirm judgment of the lower court when Appellant/Petitioner sufficiently alleged that Respondents/Defendants acted arbitrarily, capriciously, and in bad faith?

4. Did the reviewing court, the Supreme Court of the State of California, improperly deny the Petition for Review

when Appellant/Petitioner sufficiently alleged that Respondents/Defendants acted arbitrarily, capriciously and in bad faith?

5. Did the reviewing Court of Appeals improperly infer there were two actions in this case: 1) Washburn's assignment of grade of "D" on Chinakool's papers; and 2) the committee's review of Chinakool's grievance filed?

6. Did the reviewing Court of Appeals and Trial Court fail to make any determination of the allegations for the Writ of Mandate did not sufficiently plead arbitrariness, caprice or bad faith on the part of the Respondents/Defendants towards Petitioner/Appellant?

7. Do issues of race and sexual harassment and discrimination as alleged in the Petition for Writ of Mandate compel the lower courts to conduct an evidentiary hearing to fulfill procedural

due process under Goss vs. Lopez?

8. Does sexual and racial discrimination and harassment at our educational facilities prevent or preclude judicial intervention?

## STATUTE INVOLVED

4th Amendment to the United States Constitution

6th Amendment to the United States Constitution

Due Process Clause of the United States Constitution

Equal Protection Clause

Education Code Section 51500

## STATEMENT OF CASE

Petitioner CHINAKOOL filed a Petition for Extraordinary relief in the nature of mandamus on October 5, 1984 averring that she had been selectively singled out on the basis of sex and race

discrimination by Respondent PAUL D. WASHBURN. She claims that she was given a low grade an evaluation on her Business Course 598 paper and her Business Course 574 final examination because of arbitrary and capricious grading practices of Defendant WASHBURN. Petitioner CHINAKOOL sought relief by way of Writ of Mandate to acknowledge and recognize that she should be granted a Master's Degree from California State University at Los Angeles in Business Administration and that she be recognized to have completed Business Courses 574 and 598 with a grade of "B" or better. On April 10, 1985, the Respondents TRUSTEES OF THE CALIFORNIA STATE UNIVERSITIES AND COLLEGES, DR. PAUL WASHBURN and DR. KEITH R. BLUNT filed a Demurrer to the Petition stating that the Petition fails to allege facts upon which the relief sought can be granted, and

that the Writ of Mandate will not issue to change the Petitioner's grade, nor to compel the issuance of the degree that the Petition alleges the Petitioner is not qualified for academically. The original Petition for Mandate had been noticed to be heard on April 24, 1985. It was heard on that occasion before Honorable John L. Cole, Judge presiding who sustained the Demurrer with thirty days leave to amend on the grounds stated in the demurring papers.

On May 23, 1985, Petitioner filed her First Amended Petition for Extraordinary Relief in the nature of Mandamus amending her Petition seeking relief that Respondents be compelled to conduct an impartial administrative hearing on the grading of CHINAKOOL's performance in Business Courses 574 and Course 598 by Respondent PAUL D. WASHBURN and that such hearing be conducted by a

neutral adminstrative hearing officer. Petitioner further sought ample and reasonable notice of such administrative hearing and the opportunity to present witnesses and cross examine and confront witnesses at that hearing. The First Amended Petition for Writ of Mandamus was set to be heard on June 26, 1985 and Respondents' counsel filed a Demurrer to the First Amended Petition on June 18, 1985, claiming that the Petition fails to allege facts upon which relief sought could be granted, in that a Writ of Mandate will not issue to compel a trial type adversary hearing to evaluate the propriety of Petitioner's grades. On June 26, 1985, the Demurrer was heard before Honorable John L. Cole who sustained Respondents' Demurrer to the First Amended Petition and granted leave to amend within thirty days.

On July 25, 1985, Petitioner filed

her Second Amended Petition for Extraordinary Relief in the nature of Mandamus averring to instances of inappropriate sexual advances by Respondent PAUL D. WASHBURN and that, upon the rejection of said advances, Respondent WASHBURN retaliated against her by giving her low marks and grades in her Business Courses 598 and 574. In her Second Amended Petition for Extraordinary Relief in the nature of Mandamus, petitioner sought relief by obtaining an Order that three neutral and disinterested industrial psychology professors be appointed to read Petitioner's 598 paper and grade such paper with the average of three grades becoming the actual grade, and to conduct an administrative hearing on the issues of sexual harassment and race discrimination. The Second Amended Petition for Writ of Mandamus was noticed

for hearing on August 30, 1985. On August 22, 1985, Respondents filed a Demurrer to the Second Amended Petition stating that the Second Amended Petition fails to allege facts upon which the relief sought can be granted, in that a Writ of Mandate will not issue to compel the creation of new procedures to evaluate the propriety of Petitioner's grades. The Demurrer came on for hearing on August 30, 1985 and the Court sustained the Demurrer without leave to amend on the grounds stated in the demurring papers. After sustaining the Demurrer without leave to amend and Order of Dismissal was entered and Petitioner filed her Notice of Appeal on November 1, 1985.

On May 7, 1986, Petitioner filed her Opening Brief with the Court of Appeals of the State of California for the Second Appellate District. In that Opening

Brief she alleges that the lower court abused its discretion and committed error in sustaining the Demurrer when the Petition for Writ of Mandate stated facts sufficient to constitute a cause of action on which relief could be granted. On or about May 13, 1986, Respondents filed their brief with the Court of Appeals for the State of California. On or about June 20, 1986, Petitioner filed a Reply Brief. On September 2, 1986, Petitioner and Respondents appeared before the Court of Appeals and made oral argument on the Appeal. The matter was taken under submission and on September 4, 1986 the Court of Appeals, consisting of P. J. Feinerman, writing the Opinion, and J. Ashby and J. Hastings concurring, affirmed the Judgment of the lower court.

On or about October 7, 1986, Petitioner filed a Petition for Review with the Supreme Court of the State of

California. On November 19, 1986 the Petition for Review was denied, It was signed by the Chief Justice for the State of California, Honorable Rose Bird.

## STATEMENT OF FACTS

Petitioner enrolled in the Masters of Business Administration program at California State University at Los Angeles in January of 1981 having successfully completed and graduated from other college institutions and receiving degrees: Bachelors of Arts Degree in Education and in Business with Minor Degrees in English and Management. Petitioner met the eligibility requirement to enroll in such a degree program at said University. Petitioner affirmatively states that she is of oriental extraction and not a citizen of the United States and that she had received her primary and secondary education at a convent taught by European English-speaking nuns. Petitioner states that in September of 1981 she enrolled in Business Course 574 which was called "Managing Employee Motivation and Work

Behavior" and conjunctly enrolled in Business Course 598 which was the term paper portion of the Business Course 574. Petitioner was an above-average student having maintained prior to taking these two courses, "A's" and "B's" towards her Masters Degree. These two business courses were taught by Respondent PAUL D. WASHBURN. Petitioner enrolled in Business Courses 598 and 574 and endeavored to obtain "A" or "B" grades in those classes. During the course, Respondent PAUL V. WASHBURN made inappropriate sexual advances at Petitioner. Petitioner rejected and shun those advances. Professor WASHBURN, feeling somewhat offended by Petitioner's rejection, took retaliatory measures to lower the grade of Petitioner in the courses she was taking with him. On other occasions Professor WASHBURN made statements to others concerning his

discriminatory grading policy towards oriental students and to give them lower grades. In Petitioner's Second Amended Petition for Writ of Mandate she states that while she was sitting in class during class breaks, Professor WASHBURN would sit down next to her and proposition her to go out with him later that evening by conduct and/or words. Petitioner affirmatively states that the proposition made by Dr. WASHBURN to her was sexually related. The sexually related propositions continued on for several occasions. In or about November of 1981, Respondent WASHBURN requested Petitioner to come to his office to discuss certain matters and on that occasion, he attempted to lure Petitioner into an unlighted dark office for the purpose of sexual overtures by his conduct, and/or words. Petitioner emphatically states that she rejected

such advances and propositions. After several episodes of rejection, Respondent WASHBURN began retaliating against Petitiioner by lowering her grade in Business Courses 598 and 574. She states that prior to her rejections she was maintaining "A" and "B" work in those two courses and that subsequent to such rejections, her work was graded as "D" work. The Second Amended Petition of Petitioner states that the policy of the California State University at Los Angeles is that should a student fail a required course, he or she would have to repeat that failed course. Dr. WASHBURN was designated as the instructor of the 574 and 598 Business Courses for the following term. If Petitioner failed these two courses the first time, her repeat courses would be taught by Respondent PAUL WASHBURN. Professor WASHBURN was cognizant of this policy and

used it to the detriment of the Petitioner in grading her. Petitioner goes on to state in her Petition that Professor WASHBURN's grading of her papers and quizzes was arbitrary and discriminatory and not based on objective criteria. Because of Professor WASHBURN's arbitrary, capricious, and nondiscriminatory grading of Petitioner, she received a "D" on her Business Course 598 and a corresponding grade of "D" on Business Course 574. It was the University standard of grading that should a student fail either one of the Business Courses 598 or 574, that student could be dismissed from the University for not maintaining at least an overall "B" average. Because of the assignment of "D grades to Business Courses 598 and 574, Petitioner's overall grade average dropped below a "B" average or corresponding below 3.00 on a 4.00 basis.

She was therefore dismissed from the Masters of Business Administration Program from California State University at Los Angeles. Petitioner filed said Petition for Writ of Mandate to have her grade adjusted upward for Business Courses 574 and 598 and to have a Masters of Business Administration Degree granted to her or in the alternative, an impartial administrative hearing be set up to evaluate Petitioner's performance in said courses by neutral administrative officer, with Petitioner being given the opportunity to present witnesses on her behalf, or in the alternative, that Respondents be compelled to have three neutral and disinterested industrial psychology professors read her 598 paper and grade such paper with the average of three grades becoming the actual grade and to conduct an administrative hearing on the issues of sexual harassment and

race discrimination. The foregoing three types of relief were sought in the respective Petitions for Writ of Mandate filed with the lower court. At the hearing on the original Petition for Writ of Mandate, the lower court stated that there was no way in the world that the court could give Petitioner a grade or a Masters Degree or anything else. At the hearing of the First Amended Petition, the Court felt that there should not be an administrative hearing as to the grading of such paper by Respondent WASHBURN, even when there were issues of sexual harassment or racial discrimination. At the hearing on the Second Amended Petition for Writ of Mandate, the Court stated that there was no purpose in ordering an administrative hearing on the issues of sexual and racial discrimination. The Court at the time of the hearing of the Second Amended

Petition for Writ of Mandate queried that even if an administrative hearing had been ordered to be conducted into the areas of racial discrimination and sexual harassment and that the hearing body actually found that she was sexually and racially disciminated against, what will be the next step the Court would employ? The Court went on to say that it was not going to read the paper and grade it. Since the Court was not going to read and grade the paper, the Court sustained the Demurrer without leave to amend. Based on the foregoing Statement of Facts and Statement of Case, and the nature of the action and relief sought, Petitioner raises the following questions.

**1. REVIEWING COURT IMPROPERLY CONSIDERED FACTS OUTSIDE THE SCOPE OF THE ORIGINAL, FIRST AMENDED AND SECOND AMENDED PETITION FOR WRIT OF MANDATE**

The Court of Appeals, in reviewing the Superior Court's judgment dismissing the Petition for Writ of Mandate and granting a Demurrer on said Petitions, incorporated into their decision reference to the First Amended Petition relative to a University Student Grievance Committee hearing before which Ms. CHINAKOOL was examined. The reviewing Court inferred that the Committee gave her a fair and impartial hearing and that Appellant refused the Committee's offer to rewrite and submit a new paper and have it independently graded. The reviewing Court affirmed the lower court's decision. The last paragraph of the decision of the Court of Appeals reflects the inference drawn and

the refusal on the part of the Appellant to rewrite a new paper. The original Petition for Writ of Mandate does not mention the University Student Grievance Committee and such Student Grievance Committee was cursorily mentioned in the First Amended Petition for Writ of Mandate at Paragraph 12.

> "12. On June 21, 1982, the University Student Grievance Committee examined the grievance filed by Petitioner and recommended that the Petitioner take advantage of the opportunity to rewrite the 598 paper on a different topic. Petitioner was not given procedural due notice and opportunity to be heard at this meeting conducted on June 21, 1982. She was not permitted to have an attorney present or to

represent her interests at the time of that hearing. Petitioner possessed a fundamental interest and a proper right to be graded fairly and impartially without reference being made to her national origin, race or sex."

This is the only paragraph in all the Petitions that have been filed against Defendants/Respondents that make any mention to the University Student Grievance Committee. As can be seen from such paragraph, Appellant does mention that there was a recommendation that Petitioner take advantage of the opportunity to rewrite such paper on a different topic, but mention is also made that she was not given procedural notice and opportunity to be heard at the hearing conducted, that she was not permitted to have an attorney present or

to represent her interest, and that she has a fundamental interest to be graded fairly and properly without any reference made to her national origin, sex or race. The reviewing Court failed to consider the primary issues of race, national origin and sex discrimination by Professor WASHBURN in the 574 class and the 598 paper. There is a strong public policy concern against discrimination at our educational facilities, and the reviewing Court, instead of considering the facts of this case and that strong public policy concern, drew inferences that the hearing process was fair and impartial.

It has been held that an order sustaining a Demurrer is not appealable; an appeal lies only from the ensuing Judgment of Dismissal. Code of Civil Procedure Section 581d, Section 904.1(a). Beazell vs. Schrader (1963), 59 C.2d 577,

579-580. Berri vs. Superior Court (1955), 43 C.2d 856, 860. In this action, the Superior Court entered a Judgment of Dismissal. Appellant has a right to appeal from that Judgment of Dismissal. It has been held that in reviewing a successful Demurrer, the Appellate Court accepts as true all well-pleaded allegations, however odd or resistant as to proof. Smith vs. Commonwealth Land Title Insurance Company (1986), 177 C.A.3d 625. The Appellate Court in reviewing a Judgment of Dismissal on Demurrer will treat the Demurrer as admitting all material facts properly pleaded and all reasonable inferences which can be drawn therefrom. Von Batsch vs. American District Telegraph Company (1985), 175 C.A.3d 1111. Kaiser Engineers, Inc. vs. Grinnell Fire Protection Systems Company (1985), 173 C.A.3d 1050. Although the

Plaintiff bears the burden of demonstrating either that the Demurrer was sustained erroneously or that the sustaining of the Demurrer without leave to amend was an abuse of discretion, the Trial Court's ruling sustaining a Demurrer is deemed erroneous where the Plaintiff has stated a cause of action under any possible legal theory. Terhell vs. American Commonwealth Associates (1981), 172 C.A.3d 434. The fundamental question before the reviewing Court is whether any cause of action is framed by the facts alleged in the Complaint. Surina vs. Lucey (1985), 168 C.A.3d 539. The sole function of a Demurrer is to test the sufficiency of the challenged pleadings, and in reviewing an Order Sustaining a Demurrer, the Court is required to construe the Complaint liberally to determine whether, assuming the facts pleaded to be true, a cause of

action has been stated. Wallis vs. Superior Court (1984), 160 C.A.3d 1109.

The reviewing Court did not liberally construe the merits of Plaintiff's Petition for Writ of Mandate in a fashion most favorably to the Appellant. Instead, in reviewing the Petition and the Judgment of the Second Appellate Department of the Court of Appeals, there is no doubt left in the mind of the reader that the reviewing Court drew every nuance and inference against the Petitions to affirm the Judgment of the lower Court. Nowhere in any pleadings or papers, or any Declarations, lodged with the Court, is there any mention rebutting the primary issues of race, national origin and sex discrimination. The face of the Petition, on its four corners, indicates that Appellant was sexually propositioned and discriminated against because of her

race and national origin. The reviewing Court had to comb the three Petitions filed with the Court to come up with some reason to affirm the lower Court's decision. Collectively all three Petitions set forth serious grounds for sexual, national origin and race discrimination at this particular educational institution. To blithely conclude that this is a matter that should not warrant judicial intervention defeats public policy concerns and other legislative enactments prohibiting race and sex discrimination in employment, at the educational level, and in other areas. On facts very similar to the case at bar, the Court concluded in Wong vs. Regents of the University of California, 15 C.A.3d 823, 829, that if a Petition for Writ of Mandate sufficiently states a cause of action a Demurrer will be overruled. As mentioned at pages 8-9,

the Court in Wong reversed a judgment of dismissal and said:

> "By its Demurrer Respondent admitted the truth of all allegations which are well pleaded, however, improbable the facts may be. (Lee vs. Hensley, 103 C.A.2d 697, 704).
>
> "We advert to the Petitions in Paragraphs VI, VII, X and XI (quoted ante). These allegations, unexplained and uncontroverted in any way as they are for purposes of Demurrer, must reasonably be held to allege that the University officials were acting arbitrarily and capriciously in Wong's Dismissal. The Petition for Mandate accordingly stated a

cause of action, and the Judgment, insofar as it has dismissed the mandate proceedings upon the sustaining of Respondent's General Demurrer, was erroneous. The Judgment, for that reason also, must be reversed."

Almost on identical facts, the Court in Schuffer vs. Board of Trustees, 67 C.A.3d 208, 218, reversed the Judgment of the lower Court and overruled the Demurrer thereby permitting a Petition for Writ of Mandate to stand and to remand the matter back to the lower court for an evidentiary hearing on the merits of that Petition. That Court found that there was a viable cause of action stated and that the Demurrer should be overruled. As the Court stated in Schuffer vs. Board of Trustees:

"Petitioner's basic

complaint is that he, as a student at a public University, was singled out for discriminatory and arbitrary treatment in connection with the completion of necessary requirements for receiving his graduate degree. His resort to the Courts, although based upon different facts, is similar to the action pursued in Wong vs. Regents of the University of California (1971), 15 C.A.3d 823, in which a medical student, by Writ of Mandate, sought legal intervention in his academic dispute with the Medical School Authorities of the University of California. As in Wong, Mandate is a proper remedy in the instant case...."

"Petitioner has stated a

cause of action, by alleging deprivation of fundamental constitutional rights, i.e. discrimination and lack of equal protection guaranteed by the Fourteenth Amendment of the United States Constitution. (See Goldberg, supra, 248 C.A.2d 867, 873-875; Eisen vs. Regents of the University of California (1969), 269 C.A.2d 696, 698.) In Eisen citing Goldberg with approval, it is said that the parties agree that the University's rulemaking powers and its relationship with its students...are subject to federal constitutional guarantees...." (Eisen, supra, 269 C.A.2d 696, at page 698)".

"A discussion in Greenhill vs. Bailey (Eight Cir. 1975), 519 F.2d 5, 7, explores the traditional rule of non-interference by Judicial process with the affairs of an educational institution. Thus, the Greenhill Court stated:

"It is true that the Courts will ordinarily defer to the broad discretion vested in public school officials and will rarely review an educational institution's evaluation of the academic performance of its students. (citations). Notwithstanding this customary hands-off policy, judicial intervention in school affairs regularly occurs when a State Educational Institution acts to deprive an

individual of significant interest in either liberty or property. (citations). It is well established that when such a deprivation occurs the procedural safeguards embodied in the Fourteenth Amendment are called into play, and Courts will not hesitate to require that the affected individual be accorded such protection. (citations)."

In Paragraph 12, the Appellant specifically states that she was denied procedural due process, notice and opportunity to be heard and did not have an attorney present to represent he interests at the time of the hearing. There were also alleged violations of constitutional magnitude involving national origin, race and sex discrimination. The Petitioner has

pleaded ultimate facts in setting forth national origin, sex and race discrimination at the educational institution.

The allegations of the Petition for Writ of Mandate should be construed in a fashion most favorably to the Petitioner. The reviewing Court and the lower Court did not interpret the Petitions in favor of the Petitioner/Appellant but instead drew all inferences against such Petitions. Looking at the face of the Petitions, Petitioner has sufficiently alleged arbitrariness, caprice and bad faith on the part of the Respondent UNIVERSITY, Professor WASHBURN and other Respondents to overcome the granting of the Demurrer. The judgment of dismissal should be reversed and the matter remanded to the Superior Court for an evidentiary hearing.

**2. REVIEWING COURT, THE SUPREME COURT OF THE STATE OF CALIFORNIA, IMPROPERLY DENIED THE PETITION FOR REVIEW.**

For the same reasons as mentioned in Reason 1 above, including all points and authorities, Petitioner states that the Supreme Court of the State of California erred in improperly denying the Petition for Review. The State of California has statutory authority prohibiting discrimination in our educational institutions. Education Code Section 51500 specifically states:

> "No teacher shall give instruction nor shall a school district sponsor any activity which reflects adversely upon persons because of their race, sex, color, creed, national origin or ancestry."

The Petitions for Manddate establish sex, race and national origin

discrimination that has not been refuted. The only papers prepared and submitted by Respondents were in the nature of demurrers. There has been no challenge to the facts as alleged in the verified Petitions setting forth the discrimination. Since the Petitions must be liberally construed in a light most favorable to the Petition, the Demurrers should not have been sustained. It was against statutory law and against public policy for the Supreme Court of the State of California to deny the Petition for Review.

**3. REVIEWING COURT OF APPEALS IMPROPERLY AFFIRMED JUDGMENT OF LOWER COURT WHEN APPELLANT/PLAINTIFF SUFFICIENTLY ALLEGED THAT RESPONDENTS/DEFENDANTS ACTED ARBITRARILY, CAPRICIOUSLY AND IN BAD FAITH.**

Paragraph 7, 8 and 12 of the Second Amended Petition for Writ of Mandate sets forth grounds of arbitrariness, caprice and bad faith on the part of Professor WASHBURN by sexual, racial and national origin discrimination against Appellant. As Paragraph 7 sets forth:

> "7. Shortly after enrollment in Courses 574 and 598, in or about October, 1981, Instructor PAUL W. WASHBURN made several inappropriate sexual advances on Petitioner. While she was sitting in class, during class breaks, he would sit down next to her and

propostion her to go out with him later that evening by conduct and/or words. The proposition of Petitioner made by Defendant PAUL W. WASHBURN was sexually related. DR. WASHBURN'S sexually related propositions continued on several occasions. In or about November, 1981, Defendant PAUL W. WASHBURN requested Petitioner to come to his office to discuss certain matters. On that occasion, he attempted to lure Petitioner into an unlighted open (dark) office for the purpose of sexual overtures by his conduct and/or words. On all occasions, Petitioner rejected his advances and propositions."

Appellant states at Paragraph 8 that

prior to the sexual overtures, her grades were "A's" and "B's" on her assignments. After her rejection of his advances her work was graded as "D" work. It was also pointed out in that Paragraph that the policy of the CALIFORNIA STATE UNIVERSITY AT LOS ANGELES, is that should a student fail a required course, he or she would have to repeat that course. DR. WASHBURN was designated as the instructor of the 574 and the 598 business courses for the following term. If Petitioner failed these two courses the first time, her repeat courses would be taught by DR. PAUL WASHBURN. DR. WASHBURN was cognizant of the policy and used it to the detriment of the Petitioner in grading her. There were sufficient allegations in Paragraphs 7, 8 and 12 to put in issue race, national origin and sex discrimination at the educational institution. Paragraph 12 of the Second

Amended Complaint states:

> "After she had been assigned a "D" on her 598 paper she went to DR. WASHBURN for an explanation. He failed to give her a justifiable reason for the grade of "D". Later in that discussion and on another occasion, she learned from a close friend of DR. WASHBURN that DR. WASHBURN always gives lower grades on papers and quizzes to oriental students than he does to other students. Another Caucasion student, whose 598 paper was similar to Petitioner's received a grade of "A" on that paper."

In reviewing the face of the Petition for the Writ of Mandate, there was a sufficient showing of arbitrariness, caprice and bad faith on

the part of the Defendants/Respondent to at least overcome a Demurrer of the Petition for Writ of Mandate. It should be pointed out that the opposition papers of Defendants/Respondents do not challenge the face of the Petition alleging sex, race or national origin discrimination, but focus more on whether relief can be granted or not. The reviewing Court summarily inferred that the University Student Grievance Committee had conducted a fair and impartial hearing without any determination that the allegations of arbitrariness, caprice and bad faith were not sufficiently alleged. See Points and Authorities as alleged in Reason 1 above in support of this Reason.

**4. REVIEWING COURT OF APPEALS IMPROPERLY INFERRED THAT THERE ARE TWO ACTIONS IN THIS CASE: 1) WASHBURN'S ASSIGNMENT OF GRADE OF "D" TO CHINAKOOL'S PAPER AND 2) THE COMMITTEE'S REVIEW OF CHINAKOOL'S GRIEVANCE FILE:**

The reviewing Court improperly inferred that there are two actions here; the one was WASHBURN's assignment of the grade of "D" to CHINAKOOL'S paper, making this matter one of a "grade" dispute. It should be pointed out that the reference to the Appellant's Second Amended Petition supports race, sex and national origin discrimination and that Professor WASHBURN assigned the grade as a punitive attempt against Petitioner for her refusal of his entreaties. The assignment of the grade "D" only furthers the discrimination on campus. The Second Amended Petition for Writ of Mandate specifically addresses the race, national

origin and sex discrimination by Professor WASHBURN. The second action inferred by the Reviewing Court was the Committee's review of CHINAKOOL's Grievance file. As previously noted above at Reasons 1 and 2, the primary issues are sex, race and national origin discrimination, not the propriety of the Committee's review, although there were procedural due process issues arising out of said review. See Points and Authorities as alleged in Reasons 1 and 2 above in support of this Reason.

**5. REVIEWING COURT OF APPEALS AND TRIAL COURT FAILED TO MAKE ANY DETERMINATION ON THE ALLEGATIONS OF THE PETITIONS FOR THE WRIT OF MANDATE THAT THEY DID NOT SUFFICIENTLY PLEAD ARBITRARINESS, CAPRICE OR BAD FAITH ON THE PART OF THE RESPONDENTS/DEFENDANTS.**

Other than the inference that was improperly drawn by the reviewing Court and Trial Court, there was no mention made in the Decision affirming the lower Court's Judgment dismissing the case and granting the Demurrer that supports Petitioner's failure to sufficiently allege arbitrariness, caprice or bad faith on the part of Defendants/Respondents. The decision of the reviewing Court shows that the Court did not involve itself with the primary issues of the Second Amended Petition, but hung its hat on an esoteric inference that had no bearing to any of the

Petitions for Writ of Mandate filed in the Trial Court. In fact, the reviewing Court at page 7 of the decision states that "Chinakool alleged that the first act was motivated by bad faith, arbitrariness, or capriciousness." There was no determination that Appellant failed to allege bad faith, arbitrariness or capriciousness, and the reviewing Court did not even address those allegations. Instead, the reviewing Court, sua sponte, created an issue around the review of Chinakool's grievance file and then stated Appellant failed to allege facts in support of that issue. It is all to apparent that the second issue was created by judicial fiat, not by Petitioner. The determination by the reviewing Court and the trial Court show that, had the Court reviewed the primary issues of the Petitions for Writ of Mandate, it would

have determined that this matter should have gone to an evidentiary hearing and should not have been foreclosed by the judgment dismissing the action and granting a Demurrer without leave to amend. There were sufficient allegations on the face of the Petition that warrants an evidentiary hearing on the merits of the Petition.

**6. ISSUES OF RACE AND SEXUAL HARASSMENT AND DISCRIMINATION AS ALLEGED IN PETITION FOR MANDATE COMPEL THE LOWER COURT TO CONDUCT AN EVIDENTIARY HEARING TO FULFILL PROCEDURAL DUE PROCESS UNDER GOSS vs. LOPEZ.**

In Goss vs. Lopez (1975), 419 U.S. 569, the Court reiterated the concept of due process of law as mentioned in Baldwin vs. Hale, 1 Wall. 223, 233 and stated at page 738:

> "At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of justice and afforded some kind of hearing. Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must

first be notified."

The Court in Goss vs. Lopez was concerned with fairness and truth -- seeking in the educational system to assure rightness and fairness. The Court stated:

> "Fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights..."
>
> "Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it."
>
> "...The (Due Process)

Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school."

The Supreme Court went on to specify the type of procedural due process necessary.

"On the other hand requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination and allow the

student to present his own witnesses. In more difficult cases, he may permit counsel."

Goss vs. Lopez has set the standard for procedural due process in our educational institutions to eliminate arbitrary and discriminatory practices. The Petition for Review specifically addressed sex, race and national origin discrimination as practiced by Respondents. Such discrimination amounts to arbitrary and bad faith practices that require judicial intervention. Such judicial intervention requires the Court to mandate an evidentiary hearing on the arbitrary and bad faith practices. An individual's grade should never be conditioned upon sexual favors with the Professor or racial and national origin discrimination employed by instructors. Since the Petitioner's Writ of Mandate were dismissed, Petitioner never

underwent an evidentiary hearing. Procedural due process requires a hearing on said Petitions.

## 7. DOES SEXUAL AND RACIAL DISCRIMINATION AND HARASSMENT AT OUR EDUCATION FACILITIES PRECLUDE JUDICIAL INTERVENTION.

It violates the U.S. Constitution and the California Constitution to discriminate against an individual because of his race or gender. Educational institutions and educators of State and Federally funded institutions are required to adhere and conform with those constitutions and other laws and statutes pertaining to fair and non-preferential treatment to all individuals. Case law is replete with many instances where discrimination would not be permitted in our educational institutions. Brown v. Board of Education (1964), 347 U.S. 483. To segregate black students from non-black students in the general school population is just as discriminatory as allowing

educators and instructors on campus to discriminate between oriental female students and non-oriental and male students. Professor WASHBURN selectively discriminated against Petitioner because she was oriental and because of her gender and made improper sexual advances toward her and not toward non-oriental or male students. Petitioner was treated differently from other students in Professor WASHBURN'S class and was given poor grades because she refused his sexual advances. Petitioner has the right to enjoin racial and sexual discrimination that was precipitated upon her by Professor WASHBURN and to judicially require that an Administrative Hearing and inquiry be conducted into the issues of racial and sexual discrimination of Professor WASHBURN toward certain students. Petitioner is also entitled to have a disinterested

third party read her paper to determine its objective merits, since Professor WASHBURN may have lost that objective insight once Petitioner rejected his sexual and racially motivated advances.

**8. COURTS HAVE THE POWER TO INTERVENE IN ACADEMIC AFFAIRS WHEN SUCH CONDUCT IS ARBITRARY, CAPRICIOUS AND UNREASONABLE**

Respondents cite Paulsen v. Golden Gate University (1979), 25C.3d 803, mentioning that there is an exception to the rule of non-judicial intervention and academic affairs whenever it is alleged that a University or College has acted arbitrarily or in bad faith. This exception limits the school authorities in the exercise of discretion over academic affairs. The Respondent cites the Schuffer case which stated there may be judicial intervention when arbitrary and capricious conduct on the part of the University officials have been alleged. The Schuffer case found that an adequate standard utilized by the University which had been applied to a student in an unconstitutional manner through the exercise of capricious and

arbitrary decision-making mandated judicial intervention. The Appellate Court in Schuffer reversed the Trial Court's judgment and directed the trial court to conduct an evidentiary hearing at which time Petitioner would have the opportunity to present his proof. As the Court stated in Schuffer v. Board of Trustees, 67 C.A.3d 208, 220:

> "but what is not legally permissible is for a University or its faculty to pursue an unreasonable or punitive course with the student for reasons that have nothing to do with his qualifications for an advanced degree. As in most cases dealing with questions of constitutional fairness, or discrimination, the determination of what constitutes reasonable behavior

on the part of the authrority
is a factual one."

Respondent takes great care in reciting the general rule of non-intervention in academic affairs but what the Respondent ignores is the very raw and pristine issues of race and sexual discrimination as the ulterior reason for Petitioner's poor and low grades. Petitioner claims that the grade dispute centers around race and sexual discrimination, not because of a grade dispute in and of itself. Petitioner specifically states that her grades were above average until such time that she rejected the advances of Professor WASHBURN and, from that time on, her grades suffered remarkably. This no longer is an issue of academic performance, but one that centers around inherent and invidious discrimination. Board of Curators v. Horowitz case (1977), 435 U.S. 78, does not involve any

issues pertaining to race or sex discrimination in the educational institution, or academic performance and grading of a student thereon. Respondents, in their brief, have failed to cite any authority that specifically states that the Court will not intervene in academic affairs when race and sexual discrimination are at issue. The reason for such failure to state is that Respondents know Courts have the power to get involved, to intervene and then to enjoin racial and sexual discrimination in violation of U.S. and California Constitution at schools, colleges and universities.

Respondents' position that Petitioner is not entitled a Writ of Mandate for the relief sought is wholly unrealistic. If the Court has the power to issue prohibitive and mandatory injunction in many areas of the public

and private sector (i.e. such as compulsory busing of children to implement desegregation), it also has the power to arrange an administrative hearing to determine the full extent of sexual or race discrimination, exercising whatever relief it may have to remedy, prevent, or correct any racial or sexual discrimination in our educational institution. Respondents' wrongful characterization of this matter is wholly out of line with the Petitions filed and verified by the Petitioner. Because of the Constitutional nature of the alleged offenses occurring to Petitioner by Professor WASHBURN on campus a Writ of Mandate must issue to assure fairness, impartiality, reasonableness in determining academic performance. The relief requested by Petitioner is not out of line with the type of redress that is in order to correct or prevent racial and

sexual discrimination. In any case, Petitioner is entitled to an evidential hearing as to the issues of sexual and racial discrimination. The sustaining of the Demurrer has prevented Petitioner from having an evidentiary hearing to show such racial and sexual discrimination. In Wellner v. Minnesota State Junior College (Eighth circuit 1973) 487 F2d 153, the Court stated that a teacher was entitled to an administrative hearing before the board when there was an issue of bias or prejudice towards blacks.

> "however, the trial court erred when it determined not to order a hearing and instead ordered the board to reappoint Wellner to a similar teaching position. As we noted earlier, the trial court reasoned that a hearing held now could not adequately

> reflect the actual circumstances surrounding the making of the racist charges . . . we acknowlege that this latter point is troublesome. Nevertheless, we are governed by Roth and Siderman which dictate that upon the requisite showing of deprivation of an interest in liberty the appropriate remedy is a hearing ordered by the trial court. That is, in such a case Due Process requires that a party be given notice of the charges against him and a reasonable chance to be heard."

Procedural due process applies to educational institutions. Goss v. Lopez, 419 U.S. 565. In Goss v. Lopez, page 579, the Court stated that a hearing is necessary to protect the rights of the

student:

> "at the very minimum, therefore, students facing suspension and consequent interference with a protected property interest must be given some kind of notice and awarded some kind of hearing. Parties whose rights are to be effected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Baldwin v. Hale 1 Wall. 223, 233, (1864)."

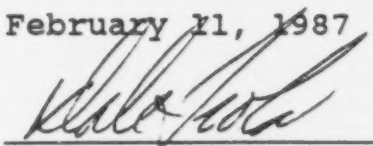
## CONCLUSION

Based on the foregoing facts and law, the reviewing Court should have reversed the Judgment of the lower Court. The Petitions as alleged sufficiently pleaded sexual, racial and national origin discrimination which should have

gone to an evidentiary hearing. The Judgment ordering dismissal foreclosed Appellant's rights to have an evidentiary hearing on the areas of discrimination.

WHEREFORE, for the reasons herein advanced, and on the authorities cited, Appellant MALINEE CHINAKOOL respectfully urges a review be granted and that this Court reverse the Decision of the Court of Appeals and the Order of Dismissal of the Superior Court and remand this case to the lower Court for an evidentiary hearing on the matters that have been more particularly described above. The Petition for Review should not have been deemed and the matter should be remanded for evidentiary hearing.

DATED: February 11, 1987



DALE M. FIOLA
Attorney for
Petitioner CHINAKOOL

# APPENDIX

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

DATE: AUG 30, 1985 JUDGE: J. SWEET

HONORABLE JOHN L. COLE

DEPUTY SHERIFF: C. PHELPS

| | |
|---|---|
| 0900 AM | C517328 CHINAKOOL, MALINEE<br><br>COUNSEL FOR PLAINTIFF:<br>DALE M. FIOLA(x)<br><br>vs.<br><br>CALIF TRUS UNIVERSITIES & COLLEGES-ETC.<br><br>COUNSEL FOR DEFENDANT:<br>CHRISTOPHER C. FOLEY(x) |
| | NATURE OF PROCEEDINGS:<br><br>The demurrer is sustained without leave to amend on the grounds stated in the demurring papers.<br>Order of Dismissal prepared. |

[x] NOTICE: [x] By respondent(s)

MINUTES ENTERED AUG 30 1985

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

| | |
|---|---|
| MALINEE CHINAKOOL, an individual,<br><br>Petitioner and Appellant,<br><br>vs.<br><br>TRUSTEES OF THE CALIFORNIA STATE UNIVERSITIES AND COLLEGES, DR. PAUL WASHBURN, an individual; DR. KEITH R. BLUNT, an individual,<br><br>Respondents. | No. B017210<br>(Super. Ct. No. C517328) |
| CALIFORNIA STATE UNIVERSITY, LOS ANGELES,<br><br>Real Party in Interest. | |

This is an appeal from a judgment of dismissal following the sustaining of a

demurrer without leave to amend to appellant Malinee Chinakool's second amended petition for writ of mandate. Appellant claims respondent Dr. Paul Washburn employed arbitrary and capricious standards to grade her work for his class because she rejected his sexual advances and she is Asian. She sought to have a writ of mandate issued to compel the regrading of her term paper by three neutral and independent industrial psychology professors and to require respondent California State University, Los Angeles, to hold an administrative hearing on her allegations of sexual harassment and racial discrimination.

## BACKGROUND

Appellant Malinee Chinakool (Chinakool) was a student in the Masters of Business Administration program at California State University, Los Angeles

(University). In September of 1981, she enrolled in Business courses 574 and 598, both of which were taught by Dr. Paul Washburn (Washburn). Business 574 was a course on employee motivation, while Business 598 was the the term paper portion of course 574. Chinakool received a "D" in both Business 574 and Business 598.

Chinakool contends she received a "D" in the courses because she rejected Washburn's sexual advances and because she is Asian. In her second amended petition, she alleged that Washburn sexually propositioned her during class breaks on several occasions. She also alleged that in November 1981 Washburn requested that she come to his office to discuss certain matters and that when she did, he attempted to lure her into his "dark office" for purposes of making sexual overtures. Chinakool alleged that

prior to these incidents she had been receiving "A's" and "B's" on her assignments for Washburn's class, but that after she rejected his sexual advances, she began to receive "D's." She further alleged that she was told by a close friend of Washburn's that Washburn always gives lower grades to Asian students than to other students.

When Chinakool received her graded term paper, she went to Washburn for an explanation of the low grade. Since she was not satisfied with the explanation he gave her, she proceeded to file a grievance with the University's Student Grievance Committee (Committee). The Committee heard her complaint on June 21, 1982, and offered her the opportunity to rewrite the Business 598 paper on a different topic. Appellant refused to write a new paper and filed a petition for writ of mandate in the superior court

on October 5, 1984.

In her original petition, appellant sought a grade of "B" or better in Business 574 and 598 and a Master's Degree in Business Administration from the University. The lower court sustained respondent's demurrer with leave to amend. The first amended petition sought to compel the University to conduct an impartial administrative hearing on the grading of appellant's work in Business 574 and 598. The lower court again sustained respondent's demurrer with leave to amend. The second amended petition sought the appointment of three neutral and disinterested industrial psychology professors to read and grade appellant's Business 598 paper, with the average of the three grades becoming the actual grade. It also sought to compel the University to hold an administrative hearing on the

allegations of sexual harassment and racial discrimination. The lower court sustained respondent's demurrer without leave to amend and entered an order of dismissal.

DISCUSSION

As a general rule, the courts have refused to review a school's determination of a student's academic achievements unless the school authorities acted arbitrarily or in bad faith. (Paulsen v. Golden Gate University (1979) 25 Cal.3d 803, 808-809; Shuffer v. Board of Trustees (1977) 67 Cal.App.3d 208, 220; Wong v. Regents of University of California (1971) 15 Cal.App.3d 823, 829.) This judicial rule of nonintervention in scholastic affairs was discussed in Connelly v. University of Vermont and State Agr. Col. (D.Vt. 1965) 244 F.Supp. 156, 159. After referring to a number of cases involving

this issue, the court noted: "The effect of these decisions is to give the school authorities absolute discretion in determining whether a student has been delinquent in his studies, and to place the burden on the student in showing that his dismissal was motivated by arbitrariness, capriciousness or bad faith. The reason for this rule is that in matters of scholarship, the school authorities are uniquely qualified by training and experience to judge the qualifications of a student, and efficiency of instruction depends in no small degree upon the school faculty's freedom from interference from other noneducational tribunals. It is only when the school authorities abuse this discretion that a court may interfere with their decision to dismiss a student." (Id., at p. 160, quoted with approval in Wong v. Regents of University

of California, supra, 244 F.Supp. 156, and the other cases cited by appellant do not support the relief sought by appellant because those cases involved disputes over student dismissals or withholding of degrees and not grade disputes. However, this is not completely correct because grade disputes were at the core of many of those cases, including Connelly. In Connelly, a medical student petitioned the court for mandate to reinstate him as a student after he was dismissed from school for having failed one course.

Although the court in Connelly recognized that the judiciary may intervene in the academic affairs of a school when the school has acted arbitrarily or capriciously, the court refused to personally review the grade given to plaintiff. The court stated: "Whether the plaintiff should or should

not have received a passing grade for the period in question is a matter wholly within the jurisdiction of the school authorities, who alone are qualified to make such a determination." (Connelly v. University of Vermont and State Agr. Col., Supra, 244 F.Supp. at p. 161.) However, the court concluded that it would order the defendant university to give the student a fair and impartial hearing on his dismissal order if the student was able to show the court that the defendant had acted arbitrarily, capriciously or in bad faith.

A similar conclusion was reached in Valvo v. University of Southern California (1977) 67 Cal.App.3d 887. In that case, a medical student who had been dismissed from the university sought a writ of mandate reinstating him as a student. After noting that the dismissal of a medical student can be set aside by

mandamus if the dismissal was arbitrary, capricious or in bad faith, the court said, "However, petitioner is not entitled to a writ of mandate reinstating him as a medical student because, to warrant the granting of such relief, the trial court necessarily would have to determine that petitioner at the time of his dismissal, was scholastically qualified to continue his study of medicine; only the appropriate authorities of the medical school are qualified to make such a determination. [Citation.] Therefore, should petitioner succeed in establishing that respondents acted arbitrarily and capriciously in dismissing him from medical school, he would be entitled to a writ commanding respondents to give him a fair hearing. . . ." (Id., at p. 896.)

Similarly, in the case at bench, if Chinakool was able to demonstrate that

respondents acted arbitrarily or in bad faith, she would be entitled to a writ requiring respondents to give her a fair and impartial hearing on her specific grievances. Here, the trial court did not err in sustaining the demurrer to the second amended petition and in dismissing the case because Chinakool failed sufficiently to allege that the University acted arbitrarily or in bad faith.

There are two actions by the University which are relevant to this case: (1) Washburn's assignment of a grade of "D" to Chinakool's paper and (2) the Committee's review of Chinakool's grievance file. Chinakool alleged that the first act was motivated by bad faith, arbitrariness or capriciousness, but has not so alleged for the second act. In fact, Chinakool's second amended petition failed to mention the proceeding held by

the Committee. However, the grievance committee proceeding was discussed in the original and first amended petitions, and both the trial court and this court are entitled to consider the verified allegations of those petitions. (Sackett v. Wyatt (1973) 32 Cal.App.3d 592, 597.) It is well established that a court may judicially notice documents in the file of the case wherein the demurrer is interposed. (Saltares v. Kirstovich (1970) 6 Cal.App.3d 504, 511.) Authority for a reviewing court to do so is expressly set forth in Evidence Code section 459, subdivision (a).

Since Chinakool failed to allege arbitrary or capricious behavior by the Committee, we will infer that the Committee gave her the fair and impartial hearing to which she was entitled. Appellant refuse the Committee's offer to permit her to submit a new paper and have

it independently graded. In light of these circumstances, judicial intervention in the academic affairs of the University is not warranted.

The judgment is affirmed.

NOT TO BE PUBLISHED.

FEINERMAN, P.J.

We concur:

ASHBY, J.

HASTINGS, J.

**O R D E R  D E N Y I N G  R E V I E W**

**AFTER JUDGMENT BY THE COURT OF APPEAL**

2nd District, Division 5, No. B017210

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

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CHINAKOOL, etc., Petitioner/Appellant,

vs.

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITIES AND COLLEGES, et al.,

Respondents;

CALIFORNIA STATE UNIVERSITY, LOS ANGELES,

Real Party in interest.

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Petitioner/Appellant's petition for review DENIED.

IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1987

MALINEE A. CHINAKOOL

Petitioner,

vs.

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITIES AND COLLEGES,

Respondent.

**CERTIFICATE OF SERVICE**

The undersigned, KELLY K. WALKER, of the Law Offices of DALE M. FIOLA, the Attorney for Petitioner, Malinee A. Chinakool, hereby certifies that on the 13th day of February, 1987, she served the foregoing Petition for Writ of Certiorari on all the parties hereto, by mailing three copies by ordinary mail, postage pre-paid, addressed as follows:

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